

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY HOWARD GATES,
Plaintiff,
v.
M. NAVARRO, et al.,
Defendants.

Case No. 1:23-cv-00271-CDB

**ORDER TO SHOW CAUSE IN
WRITING WHY ACTION SHOULD
NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY
COURT ORDER BY FAILING TO
FILE NOTICE REGARDING POST-
SCREENING ADR**

(Doc. 14)

14-DAY DEADLINE

Plaintiff Johnny Howard Gates is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The action proceeds against Defendant J. Alejo and F. Barrios on Eighth Amendment excessive force claims and against Defendant M. Navarro on an Eighth Amendment failure to protect claim.

I. RELEVANT PROCEDURAL HISTORY

On August 25, 2023, this Court issued its Order Referring Case to Post-Screening ADR and Staying Case for 90 Days. (Doc. 14.) Relevant here, the parties were directed to file notice indicating whether they wished to participate in an early settlement conference within 45 days. (*Id.* at 2.)

On October 6, 2023, this Court granted Defendants' request for an extension of time to

October 31, 2023, to file their notice concerning early ADR proceedings. (Doc. 17.)

More than 45 days have passed, but Plaintiff failed to file any notice indicating whether he wished to participate in early ADR proceedings.

II. DISCUSSION

The Local Rules,¹ corresponding with Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

Here, Plaintiff has failed to obey the Court’s August 25, 2023 order requiring Plaintiff to file notice indicating whether he wished to participate in an early settlement conference. Nor has Plaintiff sought an extension of time within which to do so.

III. ORDER

Accordingly, the Court **ORDERS** Plaintiff to show cause in writing, within 14 days of the date of service of this order, why this action should not be dismissed for his failure to comply with the Court’s order of August 25, 2023. Alternatively, within that same time, Plaintiff may file the notice provided with the Court’s August 25, 2023 order, indicating his agreement to

¹ In this Court’s February 26, 2023 order, Plaintiff was advised “the parties must comply with this Order, the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), and the Local Rules of the United States District Court, Eastern District of California (“Local Rules”) Failure to so comply will be grounds for imposition of sanctions which may include dismissal of the case.” (See Doc. 3 at 1 [First Informational Order In Prisoner/Civil Detainee Civil Rights Case].) The same order states “all Court deadlines are strictly enforced. Requests for extensions of time must be filed before the deadline expires and must state good reason for the request.” (*Id.* at 5.)

1 participating in an early settlement conference or his belief that settlement is not achievable at this
2 time.

3 **WARNING: Failure to comply with this Order to Show Cause (OSC) will result in a**
4 **recommendation that this action be dismissed without prejudice for Plaintiff's failure to**
5 **obey court orders and failure to prosecute.**

6 IT IS SO ORDERED.

7 Dated: **October 16, 2023**

8 
UNITED STATES MAGISTRATE JUDGE